Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

JAMES F. LEWIS,

Petitioner,

v.

LEWIS & CLARK MARINE, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented by this case are:

1. Does the district court abuse its discretion by dissolving the injunction against state court proceedings in a single claimant limitation of liability case (46 U.S.C. § 181, *et seq.*) when the claimant guarantees the vessel owner's right to limitaton by stipulating that the claim does not exceed the limitation fund; and

2. If so, must the injunction nonetheless be dissolved pursuant to the Saving To Suitors clause of 28 U.S.C. § 1333(2)?

The Eighth Circuit's decision answered the former question in the affirmative and the latter question in the negative. Because this case implicates significant national issues of maritime law and because the Eighth Circuit's holdings conflict with unequivocal precedent from this Court and of at least two other Circuits, claimant respectfully submits that *certiorari* should be granted. See, e.g., *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 112 L.Ed.2d 866, 111 S.Ct. 807 (1991) (granting *certiorari* to resolve conflict between Fifth and Ninth Circuits over seaman status test).

STATEMENT OF INVOLVED PARTIES

Petitioner, James Lewis, is an individual. Respondent is a privately held corporation.

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The opinion of the Eighth Circuit, No. 99-1346, is reported at 196 F.3d 900.

The order of the District Court, Case No. 4:98CV0503(MLM), is reported at 31 F.Supp.2d 1164.

STATEMENT OF JURISDICTION

The United States Court of Appeals' opinion and judgment was entered on November 5, 1999. Its order denying claimant James Lewis' Petition for Rehearing and Suggestions for Rehearing En Banc was entered on December 8, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the Court of Appeals was founded on 28 U.S.C. § 1292(a)(1). The jurisdiction of the district court was based on 28 U.S.C. § 1333(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

46 U.S.C. § 183(a). Privity or knowledge of owner; limitation

The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of

such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

46 U.S.C. § 185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefore, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

46 U.S.C. § 688(a) Recovery for Injury to or Death of Seaman (a) Application of railway employee statutes; jurisdiction. Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United

States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

28 U.S.C. § 1333(1)(a). Admiralty, Maritime and Prize cases The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

28 U.S.C. § 2072(a),(b). Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Rule F, Fed.R.Civ.P., Supplemental Admiralty and Maritime Claims Rules, Limitation of Liability

(1) **Time for Filing Complaint; Security.** Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner's option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner's interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 percent per annum from the date of the security.

(2) **Complaint.** The complaint shall set forth the facts on the basis of which the right to limit liability is asserted and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage if any, on which the demands sought to be limited arose, with the date and place of its

termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer the plaintiff's interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

(3) **Claims Against Owner; Injunction.** Upon compliance by the owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner's property with respect to the matters in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action.

STATEMENT OF THE CASE

Respondent filed its Complaint for Exoneration from or Limitation of Liability (the "complaint") in the United States District Court for the Eastern District of Missouri on March 24, 1998. Complaint, Tab A, A1,[1] *et seq.* That complaint alleged that just one week earlier, James Lewis was working as a deckhand aboard the M/V KAREN MICHELLE on or about March 17, 1998, and "was injured when he purportedly tripped over a wire and injured his back." Complaint, Tab A, A2, par. 6. The complaint invoked the Limitation of Liability Act, 46 U.S.C. § 181-195. Complaint, Tab A, A3, par. 9.

Respondent attached to the complaint an affidavit of value from a marine surveyor attesting that the value of the KAREN MICHELLE on March 17, 1998, was $450,000. Affidavit of Value, Tab B, A8. Respondent also filed security for value in the amount of $450,000 (Tab C, A9), and moved for an order approving the security for value. Motion For Order Approving Stipulation For Costs and Security For Value, *etc.*, Tab F, A17. That motion was granted and the stipulation for value approved on May 8, 1998. Order Approving Stipulation, Tab G, A19. That order also set a claim deadline of June 12, 1998. Tab G, A20. No claims other than Lewis' have ever been filed.

Unaware of the pending limitation proceeding (see Motion to Dissolve, Tab N, A52, par. 3), petitioner filed

[1] References to the record are to pages of the Joint Appendix by alphabetical Tab reference and appendix page.

his complaint in the Circuit Court of Madison County, Illinois on April 2, 1998. Tab I, A30, *et seq.*

Petitioner appeared in the limitation proceeding and initially contested appellant's right to limitation (Answer To Complaint, Tab L, A45, *et seq.*), and filed a claim in excess of the limitation fund. Tab M, A48. Appellant also moved to dissolve the restraining order (Tab N, A51, *et seq.*) and stipulated that:

1. He waives any claim of res judicata relevant to the issue of limited liability based on any judgment obtained in state court (Tab N, A52, par. 8);

2. Stipulates to petitioner's right to litigate issues relating to limitation of liability in the limitation proceeding; (Tab N, A52, par. 8);

3. He was the sole claimant. (Tab N, A52, par. 6).

Respondent objected to this motion on the basis that petitioner had not demanded a jury trial in the state court action. (Tab Q, A59, *et seq.*) Petitioner responded with a second stipulation that the value of his claim was "less than $400,000.00, and less than the value of the limitation fund filed by petitioner Lewis and Clark Marine, Inc." Tab R, A79. Petitioner also filed a reply memorandum in

which he argued that the stipulation that his claim does not exceed the limitation fund "removes any federal interest in retaining jurisdiction because the end of the exercise of federal jurisdiction – limitation of liability – has already been met." Tab R, A77.

The district court agreed with this analysis and, on December 22, 1998, entered an order dissolving the injunction against state court litigation. Tab U, Memorandum and Order, A87, *et seq.* Respondent timely filed its notice of appeal on January 21, 1998.

Claimant-petitioner does not dispute petitioner-appellant's right to limit its liability in this matter to the value of the limitation fund of $450,000. Claimant-Petitioner does not dispute that $450,000 is sufficient for the value of the vessel. Petitioner is the only claimant in this matter.

The Eighth Circuit, in a published opinion, reversed the district court's dissolution of the injunction. The Court of Appeals' decision was based on two analytical assumptions. First, the Court felt that "the determination of liability itself is part and parcel of the limitation proceeding." 196 F.3d at 908. The Court of Appeals concluded that the limitation plaintiff's right to have liability and damage issues determined by the federal court was therefore superior to the claimant's right to have his case heard in state court. Second, the Court was "not convinced that non-jury *in personam* judgments constitute a 'saved' remedy within the 'saving to suitors' clause." 196 F.3d at 910. Accordingly, the Court reversed the order dissolving the injunction.

Claimant filed a timely petition for rehearing and/or suggestions for rehearing en banc, which was denied on December 8, 1999. This petition for *certiorari* follows.

ARGUMENT FOR ALLOWANCE OF THE WRIT

The two analytical cornerstones of the Eighth Circuit's opinion conflict this Court's analysis in *Lake Tankers v. Henn*, 354 U.S. 147 (1957) (injunction must be dissolved in adequate fund limitation case); and *Langnes v. Green*, 282 U.S. 531 (1930); (injunction must be dissolved in single claimant limitation case); *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 124 (1924) (non-jury case is within saving to suitors clause). The Eighth Circuit's decision also directly conflicts with cases from the Second and Fifth. *Kreta Shipping S.A. v. Preussag International Steel Corp.*, 192 F.3d 41 (2d Cir.1999) (non-jury case in Europe is within saving to suitors clause and limitation injunction must be dissolved); *Curtis Bay Towing Co. v. Tug Kevin Moran, Inc.*, 159 F.2d 273 (2nd Cir.1947) (non-jury case is within saving to suitors clause and limitation injunction must be dissolved); *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480, 1486-1487 (5th Cir.1992) (non-jury state court case is within saving to suitors clause and removed case must be remanded).

In addition, the Eighth Circuit decision conflicts with the rationale of cases from the Fifth, Sixth, Ninth and Eleventh Circuits. *In the Matter of the Complaint of Port Arthur Towing Co.*, 42 F.3d 312, 316 (5th Cir.1995); *Magnolia Marine Transport Co. v. Laplace Towing Corp.*, 964 F.2d 1571, 1575 (5th Cir.1992); *Fecht v. Makowski*, 406 F.2d 721,

723 (5th Cir.1969); *S & E Shipping Corp. v. Chesapeake & Ohio Ry. Co.*, 678 F.2d 636, 643 (6th Cir.1982); *The Helen L.*, 109 F.2d 884, 886 (9th Cir.1940); *Beiswenger Enterprises Corp. v. Carletta*, 86 F.3d 1032, 1037 (11th Cir.1996).

The cause *sub judice* is a significant departure from maritime uniformity and should be addressed by this Court because considerations of national concern are implicated. This Court has traditionally acted to maintain the uniformity of admiralty and maritime law. *See, e.g., McDermott International, Inc. v. Wilander*, 498 U.S. 337 (1991); *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995); *Harbor Tug & Barge Co.*, 529 U.S. 548 (1997); *Miles v. Apex Marine Corp.*, 498 U.S. 19, 27 (1990). This concern has embraced the specific issues raised by this case. *Lake Tankers v. Henn*, 354 U.S. 147 (1957) (injunction must be dissolved in adequate fund limitation case); *Langnes v. Green*, 282 U.S. 531 (1930); (injunction must be dissolved in single claimant limitation case); *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 124 (1924) (non-jury case is within saving to suitors clause).

This Court established in *Lake Tankers* and *Langnes, supra*, the analytical framework by which the case *sub judice* should have been evaluated. The Eighth Circuit's decision substituted a different analysis that conflicts with *Lake Tankers* and *Henn, supra*.

The Limitation Act does not provide for exoneration; the only source of that right is Supplemental Admiralty Rule F(2). The Eighth Circuit's reliance on the vessel owner's right to seek exoneration pursuant to Supplemental Admiralty Rule F(2) conflicts with the Rules

Enabling Act, 28 U.S.C. § 2072(b) and with this Court's decision in *Henderson v. United States*, 517 U.S. 654 (1996).

As a result of the decision below, vessels plying the Mississippi River cross into a different set of maritime rules when they pass into Mississippi from Arkansas. *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480, 1486-1487 (5th Cir.1992) (state court non-jury case is within saving to suitors clause). The Eighth Circuit's decision has therefore erected a conflicting set of maritime rules over the country's primary inland waterway which vary, not with the behavior of the parties, but with the location of the vessel within a particular Circuit. This Court should not hesitate to correct this conflict in the law of this special federal interest.

CONCLUSION

The petition for writ of *certiorari* should be granted in this case to maintain the uniformity of maritime law previously established by this Court and to resolve the conflict between circuits in an issue of significant national interest.

Respectfully submitted,

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APPENDIX

In the Matter of the Complaint of LEWIS & CLARK MARINE, INC., as owner or owner pro hac vice of the M/V Karen Michelle for Exoneration from or Limitation of Liability, Appellant,

v.

James F. LEWIS, Appellee.

No. 99-1346.

United States Court of Appeals,
Eighth Circuit.

Submitted: Sept. 16, 1999.

Filed: Nov. 5, 1999.

Rehearing and Rehearing En Banc Denied Dec. 8, 1999.

James V. O'Brien, St. Louis, MO, argued, (Christopher C. Swenson, on the brief), for appellant.

Roy Dripps, argued, Wood River, IL, for appellee.

Before: MCMILLIAN and MURPHY, Circuit Judges, and TUNHEIM,[1] District Judge.

MCMILLIAN, Circuit Judge.

This is a federal admiralty case involving an underlying Jones Act personal injury action brought in Illinois state court by James F. Lewis (Claimant) against Lewis & Clark Marine, Inc. (Lewis & Clark). Lewis & Clark presently appeals from an interlocutory order entered in the United States District Court for the Eastern District of Missouri dissolving a restraining order that the district

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[1] The Honorable John R. Tunheim, United States District Judge for the District of Minnesota, sitting by designation.

court had previously entered to enjoin Claimant's state court action from further proceedings; upon dissolution of its restraining order, the district court also stayed the present federal action brought by Lewis & Clark seeking its exoneration from or limitation of liability. *See In re Complaint of Lewis & Clark Marine, Inc.*, 31 F.Supp.2d 1164 (E.D.Mo.1998) (hereinafter "Memorandum and Order"). For reversal, Lewis & Clark argues that the district court abused its discretion in dissolving its restraining order and staying the federal admiralty action because (1) the federal district court has exclusive jurisdiction to adjudicate Lewis & Clark's right to exoneration from or limitation of liability and (2) Claimant's Illinois state court action was properly enjoined under the circumstances of the present case. For the reasons discussed below, we reverse the order of the district court and remand the case to the district court for further proceedings consistent with this opinion.

Jurisdiction

Jurisdiction in the district court was proper based upon 28 U.S.C. § 1333; 46 U.S.C. app. §§ 181-196. Jurisdiction in the court of appeals is proper based upon 28 U.S.C. § 1292(a)(1). The notice of appeal was timely filed pursuant to Fed.R.App.P. 4(a).

Background

Lewis & Clark is a Missouri corporation with its principal place of business in Granite City, Illinois. At all times relevant hereto, Lewis & Clark was the owner or, alternatively, owner *pro hac vice* of the M/V KAREN

MICHELLE. On March 17, 1998, Claimant was purportedly injured while working for Lewis & Clark as a deckhand aboard the M/V KAREN MICHELLE. *See* Memorandum and Order at 1. One week later, on March 24, 1998, Lewis & Clark filed a "Complaint for Exoneration from or Limitation of Liability" (hereinafter "Complaint") in the United States District Court for the Eastern District of Missouri pursuant to the Limitation of Liability Act, codified as amended at 46 U.S.C. app. §§ 181-196. *See* Joint Appendix at A1-A5 (hereinafter "App.").

On April 2, 1998, Claimant sued Lewis & Clark in state court in Madison County, Illinois, seeking damages for personal injuries allegedly sustained in the March 17, 1998, incident. *See James F. Lewis v. Lewis & Clark Marine, Inc.*, No. 98-L-233 (Apr. 2, 1998) (hereinafter "the state court action") (located in App. at A30-A37). Claimant asserted three counts: (1) negligence under the Jones Act, 46 U.S.C. app. § 688; (2) unseaworthiness; and (3) maintenance and cure. *See id.* Claimant did not demand a jury trial in the state court action and does not dispute that it would not be tried to a jury. *See* Memorandum and Order at 2.

On May 8, 1998, the federal district court entered an "Order Approving Stipulation for Costs and Security for Value and Directing the Issuance of Notice, and Restraining Suits." *See* App. at A19-A21. In this order, the district court approved the surety bond in the amount of $450,000 as security for Lewis & Clark's interest in the M/V KAREN MICHELLE. *See id.* at A20. The district court further directed that any person with a claim related to the March 17, 1998, incident file said claim with the court

on or before June 12, 1998. *See id.* at A20-A21. Finally, the district court enjoined the institution or prosecution of any other suits against Lewis & Clark relating to the incident involving the M/V KAREN MICHELLE on March 17, 1998. *See id.* at A21.

On June 9, 1998, Claimant filed his Answer to Lewis & Clark's Complaint, as well as a Claim for Damages for Injury and a Motion to Dissolve Restraining Order (hereinafter "Motion"). *See id.* at A45-A53. Claimant initially contested Lewis & Clark's right to exoneration from or limitation of liability, *see id.* at A45, and claimed an amount in excess of the limitation fund. *See id.* at A49. In his Motion, Claimant sought to dissolve the May 8, 1998, injunction so that he might pursue his state court action. To this end, Claimant asserted that he was the sole claimant seeking damages with respect to the March 17, 1998, incident. *See id.* at A52. He also stated that he "waive[d] any claim of res judicata relevant to the issue of limited liability based on any judgment obtained in state court" and "stipulate[d] to [Lewis & Clark's] right to litigate issues relating to the limitation in this limitation proceeding." *Id.* On July 24, 1998, Claimant filed a Second Stipulation in the district court, stating that the value of his claim in the federal action was less than $400,000 and thus less than the value of the limitation fund deposited with the district court by Lewis & Clark. *See id.* at A79.

On December 22, 1998, the district court granted Claimant's Motion and entered an order both dissolving the prior restraining order enjoining related litigation and staying the federal court action pending final resolution of Claimant's Illinois state court action. *See* Memorandum and Order at 11-12. This appeal followed.

Discussion

Statutory Background

The Limitation of Liability Act (hereinafter "Limitation Act"), was "adopted primarily to encourage the development of American merchant shipping." *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 150, 77 S.Ct. 1269, 1 L.Ed.2d 1246 (1957) (*Lake Tankers*). To this end, the Limitation Act "exempt[s] innocent shipowners from liability, beyond the amount of their interest." *Norwich & N.Y. Transp. Co. v. Wright*, 80 U.S. (13 Wall.) 104, 121, 20 L.Ed. 585 (1871). Specifically, the Limitation Act permits a shipowner to limit its liability to damage claimants to the value of its interest in the vessel and the vessel's pending freight, so long as the loss is incurred without the shipowner's "privity or knowledge." 46 U.S.C. app. § 183. *See also In re Complaint of Universal Towing Co. v. Barrale*, 595 F.2d 414, 417 (8th Cir.1979) (*Universal Towing*).

Thus, when faced with potential liability for a maritime accident, a shipowner may demand a federal district court judgment for exoneration from or limitation of liability. *See* Fed.R.Civ.P. Supplemental Admiralty & Maritime Claims Rule F(2) (hereinafter "Supp. AMC Rule"). In addition to filing a complaint, the shipowner must deposit with the court an amount representing the value of the vessel and its freight, to serve as the "limitation fund" from which damage claims are satisfied. *See* 46 U.S.C. app. § 185; Supp. AMC Rule F(1). Upon the shipowner's compliance with these requirements, the district court must enjoin all related claims against the shipowner pending in any other forum and issue a notice to all potential claimants directing them to file their claims

against the shipowner in the district court within a specified time. *See* 46 U.S.C. app. § 185; Supp. AMC Rules F(3), F(4); *see also In re Petition of Beiswenger Enter. Corp. v. Carletta*, 86 F.3d 1032, 1036 (11th Cir.1996) (*Beiswenger*), *cert. deined*, 520 U.S. 1275, 117 S.Ct. 2455, 138 L.Ed.2d 213 (1997); *Universal Towing*, 595 F.2d at 417. Claimants may then file damage claims in the district court within the specified period as well as answers contesting the right to exoneration from or limitation of liability. *See* Supp. AMC Rule F(5). After all damage claims have been timely filed, the district court determines "if a loss occurred; whether there was negligence; if there was negligence, whether it was without the privity and knowledge of the owner; and if limitation is granted, how the fund should be distributed." *Universal Towing*, 595 F.2d at 417.

The federal district courts have exclusive admiralty jurisdiction over suits brought pursuant to the Limitation Act. *See* 28 U.S.C. § 1333 (1998); *In re Muer*, 146 F.3d 410, 417 (6th Cir.1998) (citing *Ex Parte Green*, 286 U.S. 437, 439-40, 52 S.Ct. 602, 76 L.Ed. 1212 (1932)), *cert. deined*, 119 S.Ct. 867, 142 L.Ed.2d 769 (1999); *Beiswenger*, 86 F.3d at 1036 (citing same). The district court also sits without a jury in such admiralty actions. *See Waring v. Clarke*, 46 U.S. (5 How.) 441, 459, 12 L.Ed. 226 (1847) (holding that the Seventh Amendment applies only to cases brought at common law, not those brought in admiralty); *Newton v. Shipman*, 718 F.2d 959, 962 (9th Cir.1983) (per curiam) (explaining that limitation actions involve no jury trial right). Moreover, as stated above, the federal district court typically enjoins claimants from pursuing common law actions in other fora. *See In re Complaint of Dammers & Vanderheide & Scheepvaart Maats Christina B.V. v. Corona*,

836 F.2d 750, 755 (2d Cir.1988) (*Dammers*). However, the same statute that grants this exclusive jurisdiction to the federal district courts also "sav[es] to suitors in all cases all other remedies to which they are entitled." 28 U.S.C. § 1333. This "saving to suitors" clause embodies a "presumption in favor of jury trials and common law remedies." *Dammers*, 836 F.2d at 754.

Given the competing interests of claimants (seeking "other remedies" such as jury trials) and shipowners (desiring resolution of liability issues in a federal forum but without a jury), a critical tension emerged between the "saving to suitors" clause and the federal courts' exclusive jurisdiction over limitation actions. *See, e.g., Jefferson Barracks Marine Serv., Inc. v. Casey*, 763 F.2d 1007, 1009 (8th Cir.1985) (*Jefferson Barracks*) ("The conflict between the Limitation of Liability Act . . . and the 'saving to suitors' clause . . . has been troublesome for the courts."). Courts have attempted to resolve this conflict between the Limitation Act and the "saving to suitors" clause by carving out two exceptions in which a claimant "must be allowed to pursue an action in another forum and have the claim tried before a jury." *Valley Line Co. v. Ryan*, 771 F.2d 366, 372 (8th Cir.1985) (Valley Line). The "adequate fund" exception occurs when the value of the limitation fund exceeds the total value of all the claims asserted against the shipowner. *See id.* (citing *Lake Tankers*, 354 U.S. at 152, 77 S.Ct. 1269). The "sole claimant" exception arises when only one claim is asserted against the shipowner. *See id.* at 373, 77 S.Ct. 1269. If either exception applies, "it is an abuse of the court's discretion to fail to dissolve the injunction against other legal proceedings," so long as the shipowner's limitation proceeding rights

are adequately protected via certain stipulations filed by the claimant with the district court.[2] *Id.*

Before the applicability of these exceptions can be considered, there must be a finding of actual statutory conflict between the Limitation Act and the "saving to suitors" clause in the case at bar. *Cf. Valley Line*, 771 F.2d at 372 (stating that "insofar as limitation proceedings deprive claimants of their right to jury trial, they are in direct conflict with the provisions of 28 U.S.C. § 1333" and *then* analyzing the applicability of the two exceptions); *Universal Towing*, 595 F.2d at 417 (similarly inquiring into conflict issue first and then examining exceptions). *But cf. Kreta Shipping, S.A. v. Preussag Int'l Steel Corp.*, 192 F.3d 41, 48-50 (2d Cir.1999) (staying "adequate fund" case in federal admiralty court and allowing action in foreign forum to proceed, irrespective of whether conflict between the Limitation Act and the "saving to suitors" clause exists). The threshold "conflict" inquiry most often involves analysis of both the shipowner's right to limitation and the claimant's attempt to preserve a jury trial remedy. *See Valley Line*, 771 F.2d at 369-70; *Jefferson Barracks*, 763 F.2d at 1008; *Universal Towing*, 595 F.2d at 415; *see also In re Complaint of Eagle Marine Indus., Inc. v. Macke*, Case No. 4:97CV0357 ERW, slip op.

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[2] Prior to dissolution of the injunction, claimant must file stipulations that include: (1) claimant's concession that "the value of the fund is the value of the vessel and its freight"; (2) claimant's waiver of "any right to a claim of res judicata based on the state court judgment"; and (3) claimant's concession that "the district court has exclusive jurisdiction to determine all issues affecting the shipowner's right to limit its liability." *Valley Line Co. v. Ryan*, 771 F.2d 366, 373 (8th Cir.1985).

at 6 (E.D.Mo. Oct. 16, 1997) (*Eagle Marine*) (stating that, where plaintiff waived her jury trial right in an Illinois state court action, "there is not a conflict between the shipowner's right to limitation and the claimant's right to a jury trial, and so this Court should not consider dissolving the injunction."). More generally, in considering this potential tension between the Limitation Act and the "saving to suitors" clause, a court must look to whether (1) the shipowner has the right to remain in federal court and (2) the claimant is seeking "saved" remedies in a forum other than the federal admiralty court. *See Eagle Marine*, slip op. at 4-6; *In re Complaint of S & E Shipping Corp. v. Chesapeake & Ohio Ry. Co.*, 1982 A.M.C. 2940, 2942-43 (N.D.Ohio 1982).

In the present case, the district court held that Claimant met the "adequate fund" exception to the federal court's exclusive admiralty jurisdiction over limitation proceedings because the $450,000 limitation fund exceeded the total value of all claims asserted against the vessel owner, which amounted to $400,000. *See* Memorandum and Order at 8. The district court found that Claimant might qualify for relief under the "sole claimant" exception as well. *See id.* at 9 n. 3. The district court rejected the arguments that Lewis & Clark had the right to exoneration from liability (in addition to limitation of liability in federal court), *see id.* at 9, and that Claimant's waiver of his right to a jury trial precluded application of the two exceptions to the federal court's exclusive admiralty jurisdiction over these types of claims. *See id.* at 9-10 n. 9.

We review the district court's order dissolving the injunction and lifting the stay under an abuse of discretion standard. *See In re Helena Marine Serv., Inc.*, 564 F.2d 15, 18 (8th Cir.1977) ("In administering equitable relief under [the Limitation of Liability Act], and particularly in deciding whether to dissolve the stay of proceedings to allow claimants to proceed against the shipowner in other courts, the District Court exercises broad equitable discretion."), *cert. deined*, 435 U.S. 1006, 98 S.Ct. 1875, 56 L.Ed.2d 387 (1978). "Abuse of discretion occurs if the district court reaches its conclusion by applying erroneous legal principles or relying on clearly erroneous factual findings." *Randolph v. Rodgers*, 170 F.3d 850, 856 (8th Cir.1999) (*quoting Fogie v. THORN Americas, Inc.*, 95 F.3d 645, 649 (8th Cir.1996), *cert. deined*, 520 U.S. 1166, 117 S.Ct. 1427, 137 L.Ed.2d 536 (1997)).

Jurisdiction in Federal Court

Claimant initially questions whether the federal court retains exclusive jurisdiction over the limitation proceeding, given that Claimant has already stipulated to the adequacy of Lewis & Clark's limitation fund. Claimant argues that, when the limitation fund sufficiently covers all claims, a shipowner's right to limited liability is no longer affected. Like the district court below, Claimant reads the Limitation Act as granting the shipowner a right to limitation only and nothing more. *See* Memorandum and Order at 9; *see also Beiswenger*, 86 F.3d 1032, 1037 (stating that, in an adequate fund case, "the vessel owner is not exposed to liability in excess of the limitation fund, and thus the vessel owner's rights under the Limitation Act are not implicated."); *Petition of Moran Transp. Corp. v.*

Mellino's Adm'x., 185 F.2d 386, 388-89 (2d Cir.1950) ("The statutory purpose is to exempt the investor from loss in excess of the value of the investment in the vessel and freight. Where that value is obviously greater than all claims, no matter how many, the statute does not permit limitation."), *cert. deined*, 340 U.S. 953, 71 S.Ct. 573, 95 L.Ed. 687 (1951). Claimant further contends that, because the Limitation Act's statutory goal of affording the shipowner limited liability has been achieved in the "adequate fund" instance, the court should not impair Claimant's ability to proceed in state court. *See In re Complaint of Port Arthur Towing Co. v. John W. Towing, Inc.*, 42 F.3d 312, 316 (5th Cir.) (*Port Arthur Towing*) ("But when a shipowner is not exposed to potential liability in excess of [the value of the vessel and its freight], the shipowner's absolute right to limit its liability is not implicated and 'the saving-to-suitors clause dictates that the admiralty court must allow suits pending against the shipowner in a common law forum, in this case the state court, to proceed.' ") (*quoting Magnolia Marine Transp. Co. v. Laplace Towing Corp.*, 964 F.2d 1571, 1575 (5th Cir.1992)), *cert. deined*, 516 U.S. 823, 116 S.Ct. 87, 133 L.Ed.2d 44 (1995). We disagree.

Before a federal admiralty court can even address the limitation question in a Limitation Act proceeding, the court must first determine whether the shipowner is entitled to complete exoneration based on the shipowner's lack of negligence. *See Universal Towing*, 595 F.2d at 417 (noting that, after all claims are filed, the district court must determine "if a loss occurred; whether there was

negligence; if there was negligence, whether it was without the privity and knowledge of the owner; and if limitation is granted, how the fund should be distributed"); *see also Port Arthur Towing*, 42 F.3d at 317 ("A limitation proceeding generally comprises a two-step process, the first being 'the establishment of liability of the shipowner to the claimant, as to which the claimant (or libellant) bears the burden.' ") (citation omitted). In other words, the liability of the shipowner is by no means assumed by the Limitation Act. Instead, the determination of liability itself is part and parcel of the limitation proceeding.[3] This idea of exoneration as more than just a procedural adjunct to limitation is reinforced by the dictates of Supplemental Admiralty & Maritime Claims Rule F, which states that "[t]he complaint may demand exoneration from as well as limitation of liability" and that a claimant must file an answer to the complaint if the claimant "desires to contest either the right to exoneration from or the right to limitation of liability . . . " Supp. AMC Rules

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[3] Claimant also cites *Fecht v. Makowski*, 406 F.2d 721 (5th Cir.1969) (*Fecht*), for the proposition that there is no right to exoneration separate from a right to limitation. Specifically, "[w]here no grant of limitation is possible, the basis for granting exoneration vanishes. In such a case, a boat owner should not be treated any more favorably than an automobile driver." *Id.* at 723. *Fecht* is the rare case where limitation was not possible because the shipowner was also the boat operator and, therefore, any negligence had to have been within the shipowner's privity and knowledge. *See id.* at 722-23. Here, the privity and knowledge of Lewis & Clark (as well as the commission of any negligence) has not yet been determined. Accordingly, *Fecht* is distinguishable.

F(2), F(5).[4] In this case, Lewis & Clark's Complaint explicitly sought exoneration from or, in the alternative, limitation of liability. Thus, even though Claimant stipulated as to the adequacy of Lewis & Clark's limitation fund, adjudication of Lewis & Clark's right to exoneration is properly within the exclusive jurisdiction of the federal admiralty court at this time.[5]

"Saving to Suitors" Clause

Claimant contends that, even if Lewis & Clark is entitled to remain in federal court, Claimant has other

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[4] The Supplemental Rules cannot in any way "abridge, enlarge, or modify any substantive right" conferred on shipowners by the Limitation Act. *See* 28 U.S.C. § 2072(b) (prohibiting abrogation of substantive rights by federal procedural rules). However, the Rules can enhance our understanding of the substantive rights involved in limitation proceedings, including the right to exoneration and its relationship to the right to limitation.

[5] We do not decide whether, as a condition of dissolving the injunction against the state court proceedings, the district court may insist that a claimant waive the res judicata effect of the state court finding on the liability issue. In other words, we leave open the question of whether a shipowner may still litigate the issue of exoneration in federal court without regard to the liability findings of a state court. *Compare In re Complaint of McCarthy Bros. Co. / Clark Bridge*, 83 F.3d 821, 828 (7th Cir.) (requiring federal court to accept state court's determination of liability and to decide limitation issues only if judgment exceeds limitation fund), *cert. deined*, 519 U.S. 950, 117 S.Ct. 361, 136 L.Ed.2d 253 (1996), *with Texaco, Inc. v. Williams*, 47 F.3d 765, 769 (5th Cir.) (noting that claimant stipulations can protect both "the shipowner's right to limit liability and [to] litigate the issue of exoneration in federal court"), *cert. deined*, 516 U.S. 907, 116 S.Ct. 275, 133 L.Ed.2d 196 (1995).

"saved" remedies which trump the shipowner's rights, such that Claimant should be allowed to proceed in state court under one of the limitation exceptions. Although he admittedly waived his jury trial right in state court, Claimant cites *Curtis Bay Towing Co. v. Tug Kevin Moran, Inc.*, 159 F.2d 273 (2d Cir.1947) (*Curtis Bay*), for the proposition that a state court jury trial is not a prerequisite to dissolution of an injunction in this type of limitation case. Instead, Claimant maintains that two other "saved" remedies apply in this case: (1) choice of forum and (2) in personam judgments. As to the former, Claimant argues that the "saving to suitors" clause grants him the right to have his claim tried in the "forum of his choice." Specifically, in an "adequate fund" case, "every claimant has a legally protected interest in choosing his [or her] forum, even though the method of trial be not changed if he [or she] is moved elsewhere." *Curtis Bay*, 159 F.2d at 276. Claimant asserts that this concept of forum choice as a "saved" remedy is further supported by language from more recent limitation cases, including this circuit's decision in *Universal Towing*. *See* 595 F.2d at 418 (noting that federal courts permit "claimants to pursue their remedies in a forum of their own choosing. . . . [including when] the limitation fund exceeds the total of all claims."); *accord Suzuki of Orange Park, Inc. v. Shubert*, 86 F.3d 1060, 1063 (11th Cir.1996) (Suzuki) ("[T]he 'saving to suitors' clause of § 1333(1) embodies a presumption in favor of jury trials and other common law remedies in the forum of the damage claimant's choice"); *Odeco Oil & Gas Co., Drilling Div. v. Bonnette*, 74 F.3d 671, 675 (5th Cir.) ("Although the claimants' interest in litigating in the forum of their choice is substantial, we will accede to that

choice only 'if it is accompanied by stipulations fully protecting Odeco's right to limit liability. . . . ' ") (citation omitted), *cert. deined*, 519 U.S. 822, 117 S.Ct. 79, 136 L.Ed.2d 37 (1996).

Claimant's reliance on this "choice of forum" language is misplaced. We interpret the "saving to suitors" clause as granting claimants a choice of remedies, not a choice of fora. *Accord Poirrier v. Nicklos Drilling Co.*, 648 F.2d 1063, 1066 (5th Cir.1981) (Poirrier) ("The 'saving to suitors' clause does no more than preserve the right of maritime suitors to pursue nonmaritime remedies. It does not guarantee them a nonfederal forum. . . . "); *see also* 14A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3674 (3d ed. 1998) ("The 'saving-to-suitors' clause has long been construed to afford litigants a choice of remedies, not of forums.") (*quoting Crispin Co. v. Lykes Bros. S.S. Co., Inc.*, 134 F.Supp. 704, 707 (S.D.Tex.1955)). Moreover, any right to choose between fora appears to arise only after a claimant has asserted a remedy "saved" by the clause itself. *Accord In re Chimenti*, 79 F.3d 534, 537 (6th Cir.1996) (stating that the goal of the "saving to suitors" clause "was to give claimants pursuing a common-law remedy the ability to choose their forum") (emphasis added); *Suzuki*, 86 F.3d at 1063 (discussing forum choice only after noting the "tension between the exclusive admiralty jurisdiction over Limitation Act claims and the presumption favoring jury trials under the saving to suitors clause"); *Universal Towing*, 595 F.2d at 417 (similarly alluding to forum choice only after stating that "[i]nsofar as limitation proceedings deprive claimants of the right to trial by jury, they conflict with the provisions of 28

U.S.C. § 1333"). Finally, a claimant's right to forum choice is severely diminished both by a shipowner's right to remove to federal court if an independent basis for jurisdiction exists as well as by a court's ability to transfer the case under the doctrine of forum non conveniens.[6] *See Poirrier*, 648 F.2d at 1066 ("[The 'saving to suitors' clause] does not guarantee [claimants] a nonfederal forum, or limit the right of defendants to remove such actions to federal court where there exists some basis for federal jurisdiction other than admiralty.").

Claimant alternatively argues that he is entitled to an *in personam* state court judgment, purportedly falling within the meaning of the "saving to suitors" clause even though it would result from a non-jury trial. Claimant notes that the Supreme Court has already found the "saving to suitors" clause to include "remedies in equity, as well as those enforceable in a court of law." *See Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 124, 44 S.Ct. 274, 68 L.Ed. 582 (1924) (*Red Cross Line*). Because there was typically no right to jury trial in equitable matters,

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[6] It is undisputed that Claimant's Jones Act claim is subject to transfer via *forum non conveniens*. Interestingly, the *Curtis Bay* court only used its forum choice language in the context of a *forum non conveniens* evaluation. Counter to Claimant's contention, the Second Circuit did not find that the saving clause protected a claimant's choice of a nonfederal forum. Instead, the court reasoned that, if a shipowner has no independent basis for its presence in federal court (as opposed to Lewis & Clark's basis, namely the right to exoneration), a shipowner's need for a convenient forum will not trump a claimant's choice. *See Curtis Bay Towing Co. v. Tug Kevin Moran, Inc.*, 159 F.2d 273, 276 (2d Cir.1947). For these reasons, we find *Curtis Bay* inapposite.

Claimant argues, non-jury cases such as his state court action must fall within the ambit of the "saving to suitors" clause. Claimant supports his contention by citing to language within *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480, 1487 (5th Cir.1992) (*Linton*), *cert. deined*, 506 U.S. 975, 113 S.Ct. 467, 121 L.Ed.2d 375 (1992), stating that because "the Supreme Court cases do not require a jury trial as an element of a 'saving to suitors' remedy[,] . . . a maritime non-jury action is not necessarily outside the scope of the 'saving to suitors' clause and within the exclusive admiralty jurisdiction of the federal courts."

We are not convinced that non-jury in personam judgments constitute a "saved" remedy within the "saving to suitors" clause. First, although certain equitable remedies may be within the scope of the "saving to suitors" clause based on *Red Cross Line*, this does not mean that all non-jury cases are necessarily within its ambit. If *all in personam* judgments were deemed "saved" by this Court, claimants could easily avoid the exclusive jurisdiction of the federal admiralty court over such limitation matters and thus effectively subvert Congressional intent. Second, there is no substantive difference between the remedies afforded Claimant in the state forum and those afforded in the federal court. Finally, besides *Linton*, Claimant can cite no other non-jury state action which has been allowed to proceed while the federal admiralty limitation case was stayed. *Linton* is distinguishable from the present case because it neither involved a limitation action nor an independent jurisdictional basis on which the federal court could hear the matter (unlike Lewis & Clark's right to exoneration in this case). Moreover, the

plaintiff in *Linton* elected to proceed with a non-jury matter pursuant to a Louisiana statute. That statutory election fell within *Red Cross Line*'s special category of "judicial remedies conferred by statute," which are "saved" remedies under the "saving to suitors" clause. *See Red Cross Line*, 264 U.S. at 124, 44 S.Ct. 274.

Conclusion

In sum, we hold that there is no conflict between the Limitation Act and the "saving to suitors" clause and thus no grounds for dissolution of the injunction imposed upon the state court action. Accordingly, we find that the district court abused its discretion when it ignored this lack of an actual statutory conflict and prematurely applied the "adequate fund" exception instead. Thus, we reverse the order of the district court and remand for further proceedings consistent with this opinion.

IN THE MATTER OF THE COMPLAINT OF LEWIS & CLARK MARINE, INC., AS OWNER OR OWNER PRO HAC VICE OF THE M/V KAREN MICHELLE FOR EXONERATION FROM OR LIMITATION OF LIABILITY.

Case No. 4:98CV0503 (MLM) In Admiralty

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

31 F. Supp. 2d 1164; 1998 U.S. Dist. LEXIS 20561

December 22, 1998, Decided

DISPOSITION: Motion of Claimant James Franklin Lewis to dissolve restraining order GRANTED. Restraining order entered by Court on May 8, 1998 DISSOLVED. Instant cause of action STAYED pending final resolution of cause of action filed by Claimant in Circuit Court of Madison County, State of Illinois, No. 98-L-233.

COUNSEL: For LEWIS & CLARK MARINE, INC., plaintiff: James V. O'Brien, Partner, Christopher C. Swenson, LEWIS AND RICE, St. Louis, MO.

For JAMES LEWIS, claimant: Richard J. Burke, Jr., Roy C. Dripps, LAKIN LAW FIRM, Wood River, IL.

JUDGES: MARY ANN L. MEDLER, UNITED STATES MAGISTRATE JUDGE.

OPINION BY: MARY ANN L. **MEDLER**

OPINION: MEMORANDUM AND ORDER

This case involves a petition by vessel owner Lewis & Clark Marine, Inc. ("Lewis & Clark") for a limitation of liability under the Limitation of Liability Act, a federal

statute intended to limit the liability of vessel owners who are not negligent and have no privity to or knowledge of the negligent cause of a maritime accident. Lewis & Clark filed the petition in this Court in response to a purported accident which occurred on March 17, 1998, causing injury to Claimant James Franklin Lewis ("Claimant"), an employee of Lewis & Clark. Presently pending before the Court is Claimant's motion to dissolve the restraining order and to stay this exoneration/limitation action. The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to *28 U.S.C. § 636*(c).

I.

PROCEDURAL HISTORY

Lewis & Clark is a Missouri corporation with its principal place of business in Granite City, Illinois. At all times relevant hereto, Lewis & Clark was the owner or owner pro hac vice of the M/V KAREN MICHELLE. On March 17, 1998, Claimant was purportedly injured while working for Lewis & Clark as a crewmember aboard the M/V KAREN MICHELLE. On March 24, 1998, Lewis & Clark filed its "Complaint for Exoneration From Or Limitation of Liability" ("Complaint") with this Court pursuant to the Limitation of Liability Act, *46 U.S.C. § 181* et seq.

On April 2, 1998, Claimant filed a lawsuit against Lewis & Clark in Madison County, Illinois, No. 98-L-233, seeking damages for personal injuries allegedly sustained in the March 17, 1998 incident. He asserted three counts: (1) negligence under the Jones Act, *46 U.S.C. § 688*, et

seq.; (2) unseaworthiness; and (3) maintenance and cure. Claimant did not demand a jury trial in the Illinois state court action and does not dispute that the case will not be tried to a jury.

In the instant case, on May 8, 1998, the Court entered an "Order Approving Stipulation for Costs and Security for Value and Directing the Issuance of Notice, and Restraining Suits." In that order, the Court approved the surety bond in the amount of $450,000 as security for Lewis & Clark's interest in the M/V KAREN MICHELLE. The Court further directed that any person with a claim related to the March 17, 1998 incident file said claim with the Court on or before June 12, 1998. Finally, the Court enjoined the institution or prosecution of any other suits against Lewis & Clark relating to the incident involving the M/V KAREN MICHELLE on March 17, 1998.

On June 9, 1998, Claimant timely filed a claim of damages for injuries in the instant cause of action and filed his Answer to Plaintiff's Complaint. In his claim, Claimant stated that "[he is] entitled to maintain an action to recover damages for the injuries sustained and hereby claim[s] an amount in excess of the value of $450,000.00 stated in petitioner's stipulation for value of its interest in the M/V KAREN MICHELLE, no part of which has been paid." See Claim of Damages for Injury, pg. 2.

On June 9, 1998, Claimant also filed a motion to dissolve the restraining order entered by the Court on May 8, 1998. In his motion, Claimant asserted that he was the sole claimant who was injured on the M/V KAREN MICHELLE seeking damages as a result of the incident

occurring on March 17, 1998 and, therefore, is entitled to a dissolution of the order of injunction. He also stipulated to the following: (1) Mr. Lewis expressly waived any claim of res judicata relevant to the issue of limited liability based on any judgment obtained in state court; and (2) Mr. Lewis stipulated to Lewis & Clark's right to litigate issues relating to the limitation in this limitation proceeding.

Thereafter, Mr. Lewis filed another stipulation with this Court. That stipulation provides:

Now comes James Lewis, claimant herein, by his undersigned counsel, and stipulates that the value of his claim in the above matter is less than $400,000.00, and less than the value of the limitation fund filed by petitioner Lewis and Clark Marine, Inc.

See Second Stipulation of James Lewis.

Claimant now seeks a dissolution of the order of injunction so that he may proceed with the cause of action he presently has pending in the Circuit Court of Madison County. Whether or not to dissolve the restraining order is the issue presently pending before this Court. *Gorman v. Cerasia, 2 F.3d 519, 523 (3d Cir.1993)* (The district court has discretion to vacate a previously-issued stay in a limitation proceeding).

II.

ANALYSIS

The Limitation of Liability Act, *46 U.S.C. § 181*, et seq., passed "to encourage the development of American merchant shipping." *Complaint of Dammers & Vanderheide,*

836 F.2d 750, 754 (2d Cir.1988) (quoting *Lake Tankers Corp. v. Henn, 354 U.S. 147, 150, 1 L. Ed. 2d 1246, 77 S. Ct. 1269 (1957)).* The Act achieves this purpose by exempting innocent shipowners from liability, beyond the amount of their interest. *In re Dammers, 836 F.2d at 754-55* (quoting *Lake Tankers, 354 U.S. at 151).* See also *Beiswenger Enterprises Corp. v. Carletta, 86 F.3d 1032, 1036 (11th Cir.1996),* cert. denied *520 U.S. 1275, 117 S. Ct. 2455, 138 L. Ed. 2d 213 (1997).* Specifically, the Act permits a vessel owner to limit its liability to the value of the vessel and its then pending freight, provided that the loss or damage is incurred without the "privity or knowledge" of the owner. *42 U.S.C.A. § 183; Valley Line Co. v. Ryan, 771 F.2d 366, 372-73 (8th Cir. 1985).* "In the typical situation of a corporate owned ocean vessel the privity and knowledge scrutiny focuses in on whether the shore-based high-leveled management is aware (or should have been) of the likelihood of the occurrence happening after the ship is underweigh [sic]." *Gorman, 2 F.3d at 523* (quoting *Tittle v. Aldacosta, 544 F.2d 752, 756 (5th Cir. 1977)).*

When a shipowner faces potential liability, the vessel owner files a claim with the federal court to invoke the protection of the Act. The vessel owner must deposit with the district court an amount representing the value of the vessel and its freight ("limitation fund"). At that point, the district court stays all related claims against the vessel owner pending in any other forum and directs all potential claimants to file their claims with the district court within a specified time period. *In re Muer, 146 F.3d 410, 414 (6th Cir. 1998); Beiswenger Enterprises, 86 F.3d at 1035; In re Dammers, 836 F.2d at 755.*

Thereafter, in a proceeding known as a concursus, the district court, sitting in admiralty without a jury, determines "whether there was negligence; if there was negligence, whether it was without the privity and knowledge of the owner; and if limitation is granted, how the [limitation] fund should be distributed." *Universal Towing v. Barrale, 595 F.2d 414, 417 (8th Cir. 1979).* It is only in this way that the admiralty court can achieve the primary purpose of the Act – "to provide a marshalling of assets [and] the distribution pro rata of an inadequate fund among claimants, none of whom can be paid in full." *In re Moran Transportation Corp., 185 F.2d 386, 389 (2d Cir. 1950)* [remaining citations omitted].

In re Dammers, 836 F.2d at 755. See also *In re Complaint of Consolidation Coal Company, 123 F.3d 126, 132 (3d Cir. 1997)* (a complaint under the Limitation Act follows the following process: the district court, sitting in admiralty without a jury, first determines whether there was negligence; second, if there was negligence, whether it was without the privity and knowledge of the owner; and, finally, if limitation is granted, how the limitation fund should be distributed), cert. denied *140 L. Ed. 2d 526, 118 S. Ct. 1380 (1998); Beiswenger, 86 F.3d at 1036* (the damage claimants bear the initial burden of establishing liability, and the shipowner then bears the burden of establishing the lack of privity or knowledge; if the vessel owner is found liable, but limitation is granted, the admiralty court distributes the limitation fund among the damage claimants in an equitable proceeding known as a concursus).

Federal courts have exclusive admiralty jurisdiction to determine whether a vessel owner is entitled to limited liability. *In re Muer, 146 F.3d at 417; Beiswenger, 86 F.3d at*

1036. In limitation proceedings, as in all admiralty cases, there is no right to a jury trial. *Beiswenger, 86 F.3d at 1037.* However, the same statute that grants the federal courts exclusive admiralty jurisdiction saves to suitors "all other remedies to which they are otherwise entitled."[1] *In re Muer, 146 F.3d at 417* (quoting *28 U.S.C. § 1333*(1)). The "saving to suitors" clause preserves common law rights and remedies, including the right to a jury trial, in the forum of the claimant's choice. *In re Consolidation Coal, 123 F.3d at 132; Beiswenger, 86 F.3d at 1037; Odeco Oil and Gas Co. v. Bonnette, 74 F.3d 671, 674* (5th Cir.), cert. denied *519 U.S. 822, 117 S. Ct. 79, 136 L. Ed. 2d 37 (1996); In re Dammers, 836 F.2d at 755.* Thus, a tension exists between the exclusive jurisdiction vested in the admiralty courts to determine a vessel owner's right to limited liability and the savings to suitors clause. *In re Muer, 146 F.3d at 417; Beiswenger, 86 F.3d at 1037; Jefferson Barracks Marine Service, Inc. v. Casey, 763 F.2d 1007, 1009 (8th Cir. 1985).*

In an attempt to reconcile the "recurring and inherent conflict" between these two statutory mandates, *In re Dammers, 836 F.2d at 754,* courts have created two exceptions to the admiralty court's exclusive jurisdiction over limitation proceedings in which a claimant must be allowed to pursue a claim in the forum of his choice. Under either exception, "the court's primary concern is to

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[1] Title *28 U.S.C. § 1333* provides, in relevant part:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

protect the shipowner's absolute right to claim the Act's liability cap, and to reserve the adjudication of that right in the federal forum." *In re Port Arthur Towing Co., 42 F.3d 312, 316* (5th Cir.) (quoting *Magnolia Marine Transp. v. Laplace Towing Corp., 964 F.2d 1571, 1575 (5th Cir. 1992))*, cert. denied ___ U.S. ___; *Odeco, 74 F.3d at 674* (allowing the state court action to proceed is contingent on protecting the absolute right of the shipowner to limit his or her liability).

The first exception occurs if the value of the limitation fund (value of the vessel plus freight) exceeds the total value of all claims asserted against the vessel owner. In such a case, the vessel owner is not exposed to liability in excess of the limitation fund and, thus, the vessel owner's rights under the Limitation Act are not implicated. *Beiswenger, 86 F.3d at 1037; Odeco, 74 F.3d at 674; Port Arthur, 42 F.3d at 316* (when a shipowner is not exposed to potential liability in excess of the value of the vessel and its freight, the shipowner's absolute right to limit its liability is not implicated and the savings to suitors clause dictates that the admiralty court must allow suits pending against the shipowner in a common law forum to proceed); *Magnolia Marine Transport Co. v. Laplace Towing Corp., 964 F.2d 1571, 1575 (5th Cir. 1992)* (the Supreme Court case Lake Tankers Corp. v. Henn, makes "crystal clear" that the Act is directed at maritime misfortunes where the losses claimed exceed the value of the vessel and freight; where the claim does not exceed that value, the saving-to-suitors clause dictates that the admiralty court must allow suits pending against the shipowner in a common law forum to proceed); *S&E Shipping Corp., 678 F.2d 636, 643 (6th Cir. 1982)* ("Where

the limitation fund is sufficient to pay all potential claims . . . a concursus is unnecessary because the claimants need not compete among themselves for larger portions of a limited fund. This exception to the concursus proceeding protects the claimant's right to a jury trial in the forum of his choice without undermining the Limitation Act's policy of limiting the shipowner's liability to the value of the vessel and its freight.").

The second exception occurs when a single claimant brings an action against the shipowner seeking damages in excess of the value of the vessel. Because a major purpose of the concursus proceeding is to resolve competing claims to the limitation fund, the single claimant may try liability and damages issues in the forum of his choice by filing stipulations that protect the shipowner's right to have the admiralty court ultimately adjudicate its claim to limited liability. *Beiswenger, 86 F.3d at 1037.* The Eighth Circuit Court of Appeals has consistently held that, in order to invoke the single claimant exception, a single claimant must make three stipulations: (1) concede that the value of the fund is the value of the vessel and its freight; (2) waive any right to a claim of res judicata based on another court's judgment; and (3) concede the district court's exclusive jurisdiction to rule on all questions pertaining to limitation of liability. *Jefferson Barracks, 763 F.2d at 1010; Valley Line, 771 F.2d at 372-73.*

If either the adequate fund exception or the single claimant exception applies, it is an abuse of discretion for the court to fail to dissolve the injunction against other legal proceedings and thus deprive a claimant of his choice of forum. *Valley Line, 771 F.2d at 373.* To require a claimant to proceed in federal court where there is only a single claimant or where the fund is adequate to cover all claims would

> transform [the Limitation of Liability Act] from an instrument protective of a vessel owner's liability to "an offensive weapon by which the shipowner could deprive suitors of their common-law rights." *In re S&E Shipping Corp., 678 F.2d at 643 n. 12* (citing *Lake Tankers Corp., 354 U.S. at 152-53, 77 S. Ct. 1269*). "In view of the explicit mandate from Congress the [claimant] must not be thwarted in her attempt to employ her common-law remedy in the state court where she may obtain trial by jury." *Lake Tankers Corp., 354 U.S. at 152, 77 S. Ct. 1269*
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> *In re Muer, 146 F.3d at 419.*[2]

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[2] As an aside, after a district court dissolves the injunction, the following procedures take place. If the state court holds the vessel owner liable for the accident and assesses damages exceeding the limitation fund, the parties must return to the admiralty court for a determination of the privity or knowledge issues. If limitation is denied, because the vessel owner fails to establish a lack of privity or knowledge, the claimant may then enforce his or her state court judgment for damages exceeding the limitation fund. Accordingly, the shipowner's absolute right to claim limited liability and to reserve the adjudication of that claim in the admiralty court, has been fully protected. *Beiswenger, 86 F.3d at 1038; In re McCarthy Brothers Company/ Clark Bridge, 83 F.3d 821, 828* (7th Cir.) (If the shipowner either (1) wins in the state court; or (2) loses, but only in an amount

Reviewing the facts of this case, the Court finds that it should dissolve the injunction as requested in Claimant's motion. The Court finds that Claimant has clearly met the adequate fund exception. The value of the limitation fund (here, $450,000) exceeds the total value of all claims asserted against the vessel owner (here, $400,000). Thus, Lewis & Clark is not exposed to liability in excess of the limitation fund and its rights under the Limitation Act are not implicated. *Beiswenger, 86 F.3d at 1037; Odeco, 74 F.3d at 674; Magnolia Marine Transport, 964 F.2d at 1575; S&E Shipping Corp., 678 F.2d at 643.*

Lewis & Clark argues that, even though Claimant meets the adequate fund exception, the Court should not dissolve the restraining order because Lewis & Clark not only has the right to limit its liability in this proceeding but it also has the right to exoneration from liability in this Court. The Court disagrees.

The purpose of the Limitation Act is limitation. The Limitation Act does not mention exoneration and, although Rule F provides a vessel owner with the right to demand exoneration, it does not guarantee "exoneration as a matter of right" nor does it reserve the question exclusively to the federal courts. *In re Antill, 1997 U.S. Dist. LEXIS 10496, 1997 WL 399603 (E.D.La.1997).* "[T]he

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less than the value of his ship and its cargo, then the need for further proceedings in federal court is obviated. If the shipowner is found liable for more than the value of his ship and its cargo in the state action, further proceedings in the federal limitation action may be necessary, but only where the claimant contests the limitation), cert. denied *117 S. Ct. 361 (1996).*

Act is not one of immunity from liability but of limitation of it and we read no other privilege for the shipowner into its language over and above that granting him limited liability." *In re Antill, 1997 WL 399603 (E.D.La. 1997).* Thus, the Court finds that the mere fact Lewis & Clark is seeking exoneration in this cause of action as well as limitation of liability does not hinder this Court's ability to dissolve the injunction.[3]

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[3] The Court also finds that Claimant may meet the single claimant exception. Certainly, there is no dispute that Claimant is a single claimant. The nature of the accident belies the possibility of multiple claims and no other claims were filed in this court after the Court notified potential claimants to do so. Additionally, Lewis & Clark has not made any representations to this Court suggesting the possibility of additional claimants.

Lewis & Clark contends that a claimant's right to a jury trial is the only common law remedy granted to the claimant under the savings to suitor clause. In light of the fact that our Claimant has waived that right in his Madison County state court action, Lewis & Clark argues that tension no longer exists between the Limitation of Liability Act and the savings to suitors clause. Thus, according to Lewis & Clark, Claimant cannot rely upon the single claimant exception for purposes of dissolving the instant injunction.

The Court does not find this issue to be as clear cut as Lewis & Clark would suggest. The express language of the savings to suitors clause saves to suitors "all other remedies to which they are entitled." This language does not expressly state that a right to a jury trial is the only remedy saved under the clause. Although some courts have elected to focus the conflict between the savings clause and the Limitation Act on the claimant's right to a jury trial, there is no holding in any Supreme Court case or Circuit Court of Appeals decision providing that a right to a jury trial is the only remedy saved to a suitor. For instance, many cases seem to suggest that the savings clause grants to a claimant the right to have his claim tried in a "forum of his

Certain stipulations are required of a claimant before a court can dissolve a restraining order, although the stipulations appear to be required only in the single claimant case. Nonetheless, assuming they apply to the adequate fund exception as well, the Court finds that Claimant has made the necessary stipulations to protect any rights Lewis & Clark may have to a limitation proceeding in this Court. As stated earlier, a single claimant must stipulate to the following: (1) concede that the value of the fund is the value of the vessel and its freight; (2) waive any right to a claim of res judicata based on another court's judgment; and (3) concede the district

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choice." See, e.g., *Odeco Oil, 74 F.3d at 675* (although the claimants' interest in litigating in the forum of their choice is substantial, we will accede to that choice only if it is accompanied by stipulations fully protecting the vessel owner's right to limit liability); *In re Antill, 1997 WL 399603,* ("Given adequate protection of the shipowner's right, a claimant is entitled to proceed in the forum of his or her choice, regardless of the judicial inefficiency this decision may cause. As the Court finds that claimant has adequately protected the shipowner's right to limit his liability, the Court must respect claimant's right to proceed in the forum of his choice, even if this choice results in an overlap between the federal and state cases"). This Court is hesitant to conclude, without express language in the savings clause or clear guidance by the Supreme Court or the Circuit Courts of Appeals, that the only remedy saved to suitors is a right to a jury trial outside the limitation proceeding. Thus, the mere fact that a claimant has waived his right to a jury trial in a state court proceeding would not necessarily render the single claimant exception inapplicable. But see In re Eagle Marine Industries, Inc., No. 4:97CV0357 (ERW), Memorandum and Order (October 16, 1997). However, as stated earlier, in light of the fact that Claimant has met the adequate fund exception, the Court need not reach this issue.

court's exclusive jurisdiction to rule on all questions pertaining to limitation of liability. *Jefferson Barracks, 763 F.2d at 1010.* Lewis & Clark has conceded that Claimant has properly entered the second and third stipulations identified above. However, as noted by Lewis & Clark, Claimant has not met the first stipulation. Nonetheless, the Court finds this inadequacy is not fatal to Claimant's motion to dissolve because Claimant amended his claim to $400,000, which had the effect of conceding the value of the fund and of limiting the judgment Claimant could seek in a state court proceeding. Therefore, that stipulation is unnecessary in this case. *Valley Line Company, 771 F.2d at 373.*[4]

III.

CONCLUSION

In light of the fact that the adequate fund exception applies in this case, it would be an abuse of discretion for this Court to fail to dissolve the injunction against other proceedings and thus, deprive Claimant of his choice of

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[4] To the extent that Lewis & Clark argues that Claimant's stipulations were unenforceable against Claimant because they were signed only by his attorney, the argument is also without merit. "While it may be the general rule that an attorney has no implied authority to compromise a client's cause of action to the client's prejudice, it is clear that an attorney does have the implied power to take all action with reference to procedural matters. [citation omitted] [Claimant's] attorney filed the stipulations in the course of following the procedure which not only maximized his client's claim but also preserved his client's substantive right to a jury trial in the forum of his choosing. There is no doubt that the stipulations are enforceable against [claimant]." *Valley Line Co., 771 F.2d at 376.*

forum. *Valley Line, 771 F.2d at 373.* Therefore, Claimant's motion to dissolve will be granted and he will be permitted to pursue his state court action.

Typically, if the vessel owner either (1) wins in the state court; or (2) loses, but only in an amount less than the value of his ship, then the need for further proceedings in federal court is obviated. *In re McCarthy Brothers, 83 F.3d at 828.* Here, Claimant has conceded that his claim is less than the value of the ship. Thus, it does not appear to the Court that there are any circumstances which would warrant the parties returning to this Court following the conclusion of the state court action. Nonetheless, in an abundance of caution, the Court will stay the present proceedings pending the conclusion of the Madison County State Court action and will administratively close this case, subject to re-opening by either party if warranted.

Accordingly,

IT IS HEREBY ORDERED that the motion of Claimant James Franklin Lewis to dissolve restraining order is GRANTED. [18]

IT IS FURTHER ORDERED that the restraining order entered by the Court on May 8, 1998, is hereby DISSOLVED.

IT IS FURTHER ORDERED that the instant cause of action is STAYED pending final resolution of the cause of action filed by Claimant in the Circuit Court of Madison County, State of Illinois, No. 98-L-233.

IT IS FINALLY ORDERED that the Clerk of the Court shall administratively CLOSE this file, which shall be

subject to reopening on motion of either party as warranted.

MARY ANN L. MEDLER

UNITED STATES MAGISTRATE JUDGE

Dated this 22nd day of December, 1998.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 99-1346EMSL

In The Matter of the Complaint of Lewis & Clark Marine, Inc.,	*	
Appellant,	*	Order Denying Petition for Rehearing and for Rehearing En Banc
vs.	*	
James F. Lewis,	*	
Appellee.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

December 8, 1999

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit